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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,804

02/09/2006

Philippe Gregoire

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Georgia-Pacific LLC

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EXAMINER

EBRAHIM, NABILA G

ART UNIT

PAPER NUMBER

1618

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,804	Applicant(s) GREGOIRE ET AL.	
	Examiner NABILA G. EBRAHIM	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02/09/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The receipt of Information Disclosure Statement dated 02/09/2006 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite numbers in parenthesis that make the claims not clear since the claims do not show to what these numbers refer. The claims are ambiguous as it is unclear what these numbers are in reference to or what they mean.

. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

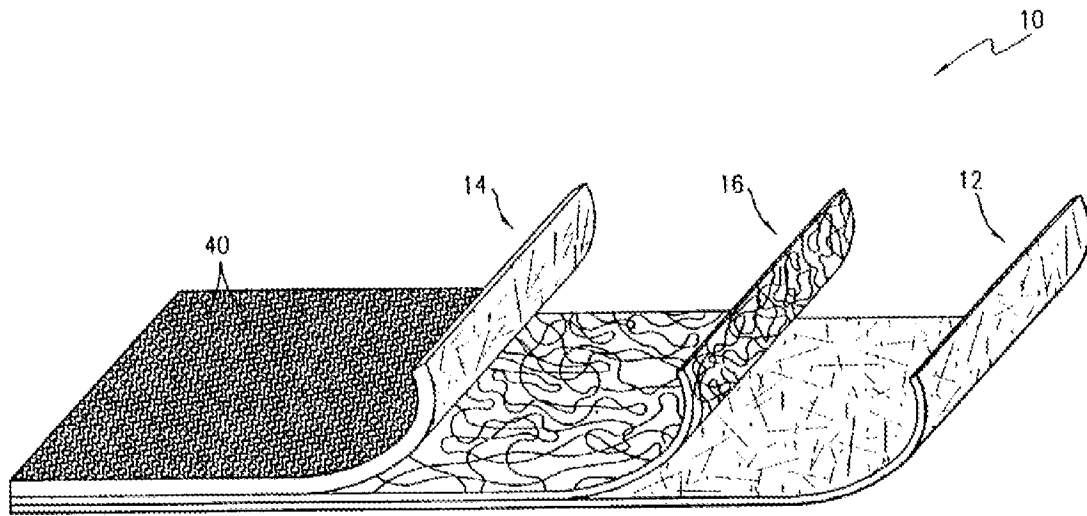
Claims 1-17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Michaud US 7037866 (Michaud).

Instant claimed invention is directed toward a pad having three layers. Two layers are made of fibrous material and in between a layer of exfoliant.

Michaud teaches a fabric having first and second layers 12, 14. In the preferred embodiment, the first **layer 12** is a carded nonwoven web 15 having a basis weight in

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the range of about 18 to 45 grams per square meter which is formed of synthetic staple fibers such as rayon, acrylic, polyester, polypropylene, polyethylene, polyolefins, nylon, bicomponent and others (col. 3, lines 14+). **Layer 14** of the nonwoven sheet 10 is a carded nonwoven web 18 consisting of essentially the same staple fibers as the first layer 12 (synthetic staple fibers such as rayon, acrylic, polyester, polypropylene, polyethylene, polyolefins, nylon, bicomponent and others), but with increased basis weight. The basis weight of the second layer 14 is preferably in the range of about 45 to 180 grams per square meter (col. 3, lines 29+). Each of the first and second layers are carded webs formed by a dry-laid process which is well known in the art (col. 2, lines 5-7). The third **layer 16** is preferably a spunbond web 17 having a basis weight in the range of about 15 to 45 g/square meter which is formed from a thermoplastic material. A spunbond web is typically made from essentially continuous filaments formed of thermoplastic materials (col. 3, lines 22+). In the preferred embodiment, the third, spunbond layer of this invention is sandwiched between the first and second layers which are then hydroentangled with one another using conventional techniques (col. 2, lines 20+). Note that the rough surface is used as the exfoliant in the fabric and is present in the middle layer.



("thermoplastic material" refers to a polymer which softens when exposed to heat and returns to its original condition at room temperature. Styrene polymers and copolymers, vinyls, polyethylenes, polypropylenes and acrylics are examples of thermoplastic materials), see (col. 2, lines 63+)

The limitations recited in instant claims 2-4 are shown in the figure supra because the exfoliating layer 16 forms a layer, evenly distributed, and continuous.

Claim 19 recites a process of manufacturing the pad. Michaud discloses the same process (claim 13). The method includes (a) providing a first web formed solely of synthetic staple fibers having an inner surface and a smooth outer surface; (b) providing a second web formed solely of synthetic staple fibers having an inner surface and an outer surface; (c) providing a third web of spunbond filaments; (d) locating said third web between said inner surfaces of said first and second webs; (e) hydroentangling said staple fibers of said first and second webs with said spunbond filaments of said third web to connect said webs together; (f) forming a textured pattern on said outer

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surface of said second web; and (g) applying a binder material over said textured pattern on said outer surface of said second web.

Claim 8 recites that a sheet of fibers to be formed on a machine of the Rando Webber type and claim 17 recites that the fibers are bonded to each other by hydraulic or mechanical bonding. However, the two are product by process recitations wherein the product-by-process claims are limited and defined by the process; determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by- process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (See MPEP 2113).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

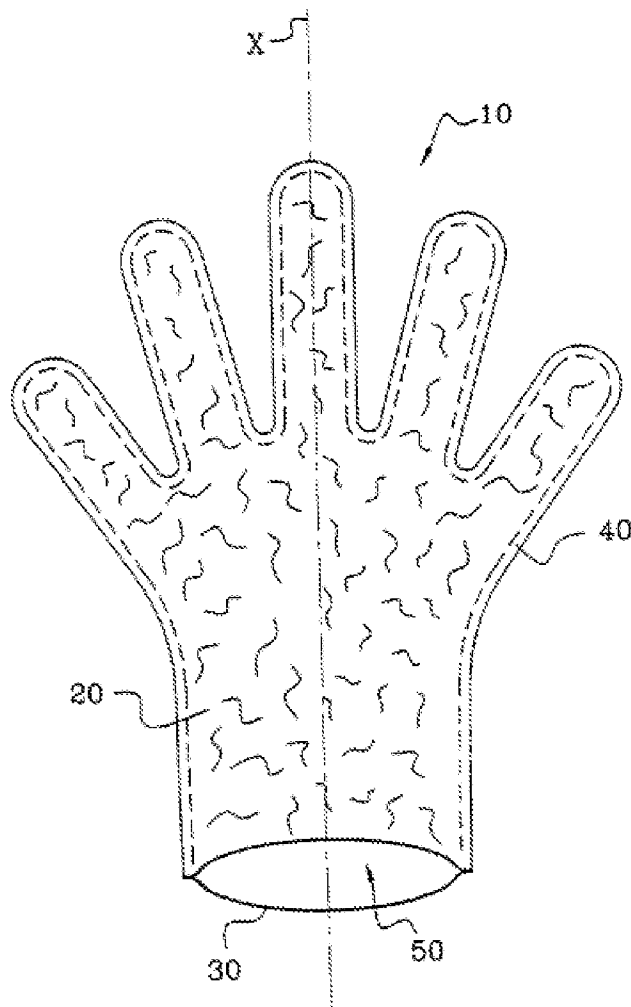
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud US 7037866, published 2/5/2004 (Michaud) in view of Vayrette US publication 2002/0107528 (Vayrette), the reference is provided by Applicant in the information Disclosure Statement.

Michaud is relied upon for the reasons set forth hereinabove.

Michaud teaches the thermoplastic fibers. However, the reference did not teach thermofusing the fibers to be at least partially bonded.



Vayrette teaches and exemplary embodiment shown in FIG. 1, the envelope 10 may be made from two sheets 20, 30 of nonwoven material. The first sheet 20 may have an abrasive function configured for exfoliation of a keratinous surface. The first sheet 20 may comprise a nonwoven material of fibers of thermoplastic synthetic nature, for example. The fibers may be fibers of polyester, nylon, or polyolefin, for example. They may optionally be combined with natural fibers of a cellulose type. An abrasive layer of polypropylene thermoplastic filaments may be **deposited** on the fibers. The surface of the first sheet 20 that constitutes the first outer face 1 of the glove may also

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have embossing. Alternatively, a nonwoven material covered with drops of ink or with bumps of any other type making it possible to obtain a sufficient roughness to cause exfoliation may be used [0045]. The second sheet 30 forming a second outer surface 2 may have a cleansing function allowing dead cells to be removed after exfoliation. The second sheet 30 also may comprise a nonwoven material of fibers of thermoplastic synthetic nature. The fibers may be, for example, polyolefin, nylon, or polyester fibers. Such a sheet 30 may have a relatively soft surface state [0046]. The nonwoven fibrous materials referred to in the invention include materials made of a plurality of fibers, wherein the materials are formed other than by weaving the fibers together. The materials may be formed by a variety of techniques known to those skilled in the art for forming webs of nonwoven fibrous material, including, for example, conventional papermaking techniques, **followed by heat** treatment to enhance the roughness of the material [0008].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to thermally fuse at least some of the thermoplastic fibers disclosed by Michaud using heat as taught by Vayrette because Vayrette discloses that using heat to such fibers enhance the roughness of the material. The artisan would expect success in having a pad for skin care comprising exfoliating effects.

Correspondence

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NABILA G. EBRAHIM whose telephone number is (571)272-8151. The examiner can normally be reached on 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NABILA G EBRAHIM/
Examiner, Art Unit 1618

/Michael G. Hartley/
Supervisory Patent Examiner, Art
Unit 1618